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December 30, 1983

Mr. Robert X. Danos, Director
Division of Safety Services
Department of Safety
Hazen Drive
Concord, New Hampshire 03301

Dear Mr. Danos:

By memorandum dated October 31, 1983, you requested our opinion on whether an application by a private firefighting unit for certification pursuant to RSA 153:4-a, I is a public record. In our opinion, such an application, except for the strike plan specifically made confidential by Fir 607.02, V(g), is a public record open to public inspection.

The Right-to-Know Law gives every citizen "the right to inspect all public records. ..." RSA 91-A:4, I. Although there is no definition of "public record," most documents in a public body's files are considered public records and subject to disclosure unless one of the exceptions in RSA 91-A:5 applies. Of these exceptions, only RSA 91-A:5, IV would be relevant. This exception is for records "pertaining to internal personnel practices, confidential, commercial, or financial information, personnel, medical, welfare, and other files whose disclosure would constitute an invasion of privacy."

The rules governing the certification of private firefighting units, Fir 607, require the unit to submit an application to the state fire marshal. The application includes a detailed information statement, including financial information if the applicant is a corporation or association, a letter of agreement from an insurance company, evidence of a performance bond, documentation that the applicant can provide fire



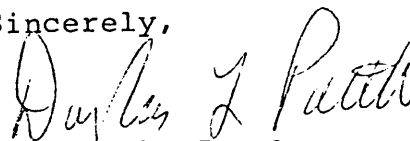
protection services, an agreement to perform certain functions, and a copy of the proposed contract with the city. The applicant must agree to disclosure to the mayor or city manager a plan showing how the applicant would provide fire services in the event of a job action or strike, though the plan is to be "confidential and therefore not available to the public."

Although some of the information concerning the financial standing and background of a corporation applying for certification might at least arguably fall within the commercial or financial exception under the Right-to-Know Law, when the balancing test used by the New Hampshire Supreme Court in Mans v. Lebanon School Board, 112 N.H. 160 (1972), is applied, it is clear that the whole application, except the strike plan, a copy of which the fire marshal would probably not have on file anyway, should be treated as a public record. In the Mans case, the Supreme Court applied a balancing test, weighing the benefits of disclosure to the public against the benefits of nondisclosure. In applying that test, however, the court noted that the Right-to-Know Law should be interpreted with a view toward providing the utmost information and toward interpreting exceptions restrictively.

In the case of an application for certification as a private firefighting unit, the benefits of disclosing to the public the information used as a basis for certifying an applicant that will be providing fire services to the city residents clearly outweighs any benefits of nondisclosure. An applicant for certification hoping to serve the citizens of a city would have to expect that information concerning its background and financial status would be disclosed to the public. It would therefore be contrary to the intent and purpose of the Right-to-Know Law to fail to disclose the application for certification.

I trust this has been responsive to your question. Please let me know if you require anything further.

Sincerely,



Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

DLP:ab

cc: Mr. Richard M. Flynn, Commissioner
Mr. Earl M. Sweeney, Deputy Commissioner
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